

Roll No.

Total No. of Case Study Questions – 5

Total No. of Printed Pages – 31

Time Allowed – 4 Hours

Maximum Marks – 100

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Answers to questions are to be given only in English except in the case of candidates who have opted for Hindi Medium. If a candidate who has not opted for Hindi Medium, his/her answers in Hindi will not be valued.

The Question Paper comprises five case study questions. The candidates are required to answer any four case study questions out of five.

Answers in respect of Multiple-Choice Questions (MCQs) are to be marked on the OMR Answer Sheet as given on the Cover Page of the descriptive answer book.

Answer to MCQs, if written inside the descriptive answer book, will not be evaluated.

Candidates should answer the Case Study Questions as selected by them in totality i.e., MCQ as well as descriptive Questions of the same Case Study Question.

Candidates are not permitted to answer MCQs of one Case Study Question and the descriptive questions of another Case Study Question and vice-versa.

Candidates may use calculator.

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Case Study : 1

Today's millennials have an extraordinary amount of intelligence and are very hard working, while, at the same time, have inclination for having fun and enjoy their free time. One such young star was Mr. Kris Anand (Anand). Anand completed his B. Tech. in Metallurgy with NIT Suratkal and then went on to do his masters from IIT Kanpur. Being a bright and hard-working person that he is, he passed out with flying colours and went to Germany to work with BMW in Germany while doing his PhD with the Munich University on 1st November, 2018. Anand opened an NR-E account with SBI, Bengaluru branch and transferred half his salary to the NR-E account from his salary account in Germany.

In addition to his work at the University, Anand also played football for his university team and he won the 'player of the series' award in the inter-university tournament held in Munich and won an amount of EUR 100,000 out of which he transferred EUR 50,000 to his NR-E account in India.

In January, 2020, Ms. Lakshmi, Anand's sister, staying in Coimbatore with her husband and kid, went to Germany to visit Anand and during that time, Anand gave Lakshmi a gift of EUR 5,000. Lakshmi was very happy to receive this gift and opened a bank account in Germany and deposited the amount in the same with a view to use it on her next trip to Germany with her family. During her visit to Germany, Lakshmi used her international credit card to go on a Europe trip along with Anand and paid an amount EUR 3,000 for the same. During Diwali, Mr Yagna, Lakshmi's husband gave a gift to Anand of EUR 1,000 (by transferring from his Indian bank account to Anand's bank account in Germany) and another INR 100,000 to Anand's bank account in India.

(3)

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Yagna runs a software company in Coimbatore and was looking for various investment opportunities in the Asia Pacific to expand his operations. During January, 2017, he came across two very good companies – one in South Korea and one in North Korea and he invested an amount of USD 100,000 and USD 140,000 respectively, in acquiring the shares of both the companies.

Anand, using the money earned by him in Germany, acquired an independent villa in Kochi for an amount of ₹ 120 lakh from a realtor in January, 2020. For this purpose, he transferred an amount of ₹ 40 lakh from his bank account in Germany to the realtor's bank account through the normal banking channels and obtained a loan of ₹ 70 lakh. For the balance amount of ₹ 10 lakh, he paid the amount using his Travellers' Cheque when he came to India for the registration of the property in March, 2020.

Anand was to return to Germany by the end of March, 2020 but could not get the flight ticket due to Covid-19 restrictions. He had to remain in India with his parents in Kochi. Due to his long stay in India and not resuming his official duties in Germany; his employer expelled him in June, 2020. The salary income almost stopped and Anand was not able service the EMI to the Bank. The house loan account was turned NPA by the end of November, 2020. The Bank took legal recourse and sent a notice under Section 13 (2) of the SARFAESI Act and recalled the entire loan amount (which was ₹ 60 lakh + interest accrued amounting to ₹ 5 lakh) and pay before the expiry of the notice period as mentioned in the notice, else the Bank will be forced to take possession of the

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(4)

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villa. The notice of 60 days given under SARFAESI Act by the Bank was going to expire on 10th January, 2021. Since Anand did not come forward to negotiate/liquidate the house loan account, the Bank took possession of the villa and put its lock and displayed a notice on the villa's door "Under possession of SBI". The SBI, after taking possession of the villa, advertised in "Sale of Mortgaged Property" in the Tamil Nadu edition of "The Indian Express" and "Dinamalar", a Tamil newspaper. The expression of interest was invited from the prospective buyers with a reserve price of ₹ 100 lakh and the villa was finally auctioned for ₹ 110 lakh and the balance amount (after deducting the debt owed by Anand) was returned by the SBI to Anand. Anand was surprised to receive the amount since he was not informed of the auction and the sale of the villa by the Bank.

Answer the following question :

1.1. Can Lakshmi use her international credit card (ICC) for incurring expenses **2**

in Germany ?

- (A) Yes, provided it is for capital account transaction.
- (B) No, use of ICC requires the prior approval of the RBI.
- (C) Yes, ICC can be used without the prior approval of the RBI
- (D) Yes, ICC can be used with the approval of the central bank of the country in which the ICC is being used.

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(5)

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1.2. Is the payment mechanism used by Anand for acquiring the villa in accordance with FEMA? 2

(A) No, consideration for acquiring property should not be in the form of travellers' cheques.

(B) Yes, since he is an NRI and the property is other than agricultural land/farm house etc.

(C) No, an NRI cannot acquire a loan in India to purchase immovable property in India.

(D) Yes, as long as the Authorised dealer/banker of the acquirer confirms the banking of the consideration (including the travellers' cheques) and reports it to the RBI.

1.3. Assuming Anand makes a representation on receipt of the notice under section 13(2), what is the maximum period available to SBI for responding to such representation from Anand? 2

(A) 10 days.

(B) 20 days.

(C) 14 days.

(D) 15 days.

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(6)

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1.4. In view of the invoking of SARFAESI Act as given in the case study, can SBI invoke the provisions of SARFAESI for non-payment of dues by Anand for another loan taken in the past for acquiring an agricultural land in Idduki district ? **2**

- (A) Yes, provided that the conditions mentioned in Section 13 and other provisions of the Act get triggered for the loan taken towards acquiring agricultural land.
- (B) No, the same lender cannot invoke SARFAESI Act against the same borrower for more than one property at a point of time.
- (C) No, the above is outside the purview of SARFAESI Act 2002.
- (D) Yes, SBI Is entitled to group/consolidate all the loans to invoke SARFAESI Act.

1.5. In the given case, what would be the minimum amount of outstanding dues (including interest) that would entitle the Bank to issue notice under SARFAESI Act ? **2**

- (A) Amount due is more than 20% of the principal amount and interest thereon.
- (B) Amount due is more than 25% of the principal amount and interest thereon.
- (C) No limit, as long as there is an amount which is due, and the loan has become an NPA.
- (D) Notice can be sent by the Bank as per its Board Approved policies for issuing notice under SARFAESI.

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(7)

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Answer the following questions :

- 1.6. Evaluate the compliance with FEMA regarding the investment (in the form of shares) made by Mr. Yagna duly capturing the nature of the transactions and the limits available. **3**
- 1.7. Analyse the gifts given/exchanged between Anand, Lakshmi and Yagna as described in the case study in the light of the provisions of FEMA. **4**
- 1.8. Anand, while filing an appeal under Section 18 of the SARFAESI Act, 2002 with the Appellate Tribunal, did not make a pre-deposit of 50% of the amount of debt due, and the same was accepted by the Appellate Tribunal. Evaluate and conclude based on the provisions of the SARFAESI Act and the relevant case laws. **3**
- 1.9. Evaluate whether the sale of the property by SBI was in accordance with the provisions of the SARFAESI Act. **5**

Case Study : 2

Mr. Arvind Ashok is a hard-working educationalist with good amount of information technology experience and currently residing in Hyderabad. After graduating from the Indian School of Business, Arvind started a Company, Aspire Consultancy Services Private Limited (ACS) along with Mr. Pandu Govind with their office in Jubilee Hills. ACS was aspiring to make ground

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breaking business opportunities in the Edu-Tech business, focusing on providing digital learning platforms for college students to equip themselves on big data, analytics, artificial intelligence and other cyber skills. Over the period of time, ACS expanded its product/service range and market reach apart from a significant improvement in customer response time through the introduction of innovative techniques. ACS's ethical work culture and employee- friendly policies allowed it to retain employees for a longer duration. Arvind and his team developed a core Learning Management Solution (LMS), which also provided a portal for conducting online live classes, sharing course and conduct online exams, after which the successful candidates will be provided a certificate of completion. The software with the help of artificial intelligence automatically generated pop-up at the screen of candidates' device that he/ she is not viewing towards the camera and a similar pop- up also gets generated at the screen of the invigilator (who invigilate digitally from the control room, through the camera of candidates' device and control of screen). Further, the platform enabled direct one-to-one interaction between the students and the facilitators and thereby provided a lot of authenticity to the entire program. They also identified a new business model of only providing the LMS platform to other educational institutions like universities etc. on PAAS basis.

Pandu and Arvind were very happy with the success of their new learning management solution. However, they also understood that there is significant competition for the same due to the presence of many active players in the market who were already rendering service of conducting the online exam for testing

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agencies either at their own location (test centres) or remote location; hence, it was not easy for ACS to penetrate in the market and capture reasonable share. ACS entered a Platform as a Service (PAAS) agreement with the top universities in different cities to use their respective computer lab facilities for running the LMS. In this manner, ACS also got equipped with testing centres in different cities. Against the competitors, they had the leverage of AI-equipped testing software. ACS, against the prevailing market prices of ₹ 850 and ₹ 550 per candidate for the conduct of online tests at the centre and remote respectively, offered and charged the price of ₹ 700 and ₹ 400 respectively. Since ACS has its own server and other IT facilities including human resources, hence after covering the directly attributable and overhead (for centralised shared services) costs, it barely managed to break even and which are substantially lesser than the ACS's average rate of earning. After few years of the success of testing LMS in the market, ACS market share reached 45% in the online testing segment. Many small and standalone players in the industry had to quit during this period. Only those who reduced their prices (and were able to cover their operating costs with such reduced prices) were able to survive. During that time, Pandu decided to increase the prices to ₹ 825 and ₹ 525 per candidate for online tests at the centre and remote, respectively. ACS successfully managed to retain a 40% market share. The loss of market share was compensated by high profits due to enhanced prices, hence the bottom line improved a bit. Using their PAAS with one of the top universities which fixed a limited number of seats for a course, ACS wrote a dynamic pricing algorithm based on which the fee for the course will be decided and as per the PAAS agreement, ACS retained 20% of the fee as their revenue and remitted the balance to the university. Both the university and the student did

not have a role in the pricing model. For the purpose of construction of a new home, Arvind took a loan of INR 200 lakhs from ABC Bank and for that purpose, ACS provided a guarantee to ABC Bank.

For the import of servers from the UK for hosting the LMS, ACS had sought professional advice from Server and Networks PLC (S&N) based in the UK for which they raised a bill of GBP 305,000, equivalent to INR 305 lakhs. S&N were not paid GBP 110,000 out of their total receivable amount, so the advocate of S&N sent a demand notice for payment under Section 8 of the Insolvency and Bankruptcy Code, 2016 against which there was no reply made by ACS within the stipulated time and so the advocate of S&N moved a petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 seeking commencement of insolvency process against ACS. They were not having any office or bank account in India, so it could not submit a "Certificate from a financial institution" as required under the Code. S&N also contended that Pandu fraudulently removed assets of ACS to the tune of INR 1,000,000, 6 months before the insolvency commencement date. Once ACS became aware of the fact that S&N have filed an application for insolvency process, ACS sent an email to S&N stating that there was the existence of dispute for the unpaid amount of GBP 110,000 because there was a breach by S&N of a warranty and liquidated damages clause as per the agreement between the two parties but there was no evidence available with ACS to support its assertion of fact and thereafter also filed a hard copy of the email with the Adjudicating Authority within 5 days of the filing of application by S&N.

Due to certain difficulties, Arvind could not repay the loan taken from ABC Bank and ABC Bank wanted to invoke the provisions of IBC, 2016.

(11)

HBC

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Answer the following questions :

- 2.1. Assuming that the allegations of S&N against Pandu are upheld, what is the potential penalty / punishment applicable for Pandu under IBC 2016 ? 2
- (A) Imprisonment for a term of 3 to 5 years, fine ranging from one lakh to one crore or both
- (B) Imprisonment for a term of 1 to 5 years, fine ranging from one lakh to one crore or both.
- (C) Imprisonment for a term of 3 to 5 years, fine ranging from one lakh to three lakhs or both.
- (D) Fine ranging from one lakh to one crore.
- 2.2. What is the status of ACS regarding the invocation of IBC, 2016 by ABC Bank for the housing loan obtained by Arvind ? 2
- (A) ACS is considered as a corporate debtor.
- (B) ACS is not considered as a corporate debtor since it is not the principal borrower.
- (C) The guarantee provided by ACS is not covered within the definition of financial debt under IBC 2016.
- (D) The guarantee given will be considered as an operational debt since it has been given based on the "services provided" by Arvind to the Company.

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2.3. Pandu wanted to provide a free tablet for every student who undergoes a course with ACS and wanted to ensure that the LMS platform is accessible only on the tablet provided by the Company and cannot be accessed through the web and ACS refused to provide the LMS without the tablet. What is the nature of this arrangement ? **2**

- (A) Refusal to deal
- (B) Horizontal agreement
- (C) Exclusive supply agreement
- (D) Tie in agreement

2.4. Which of the following is not one of the advantages of perfect competition ? **2**

- (A) Promotes innovative practices
- (B) Providing greater choice to sellers to decide the buyer
- (C) Ensure cost of production is kept at its lowest
- (D) Effective allocation of resources

2.5. Can the price of ₹ 700 and 400, respectively charged by ACS be considered as predatory pricing ? **2**

- (A) No, because the price charged recovers the costs incurred.
- (B) No, because ACS is free to fix whatever price it wants in a free economy.
- (C) Yes, because these are lower than the prevailing market price.
- (D) Yes, because the profits earned are lower than the average rate of return for ACS.

Answer the following questions :

- 2.6. Examine, with reasons whether ACS holds a dominant position in the relevant market and whether its actions tantamount to abuse of dominant position. 5
- 2.7. One of ACS's competitors was of the view that the PAAS agreement entered into by ACS with the dynamic pricing model was in violation of Section 3(1) read with Section 3(3)(a) of the Competition Act. Evaluate with reasons. 4
- 2.8. Can the adjudicating authority reject the application filed by S&N based on the premise that the amount claimed by S&N is under dispute ? 3
- 2.9. Does the non-availability of the certificate from a financial institution in any way impact the CIRP process filed by S&N ? 3

Case Study : 3

Mr. Shaswat Mishra is a dynamic young professional who moved from India to Boston in 2019. Shaswat, who holds an Indian passport moved abroad for higher studies and research in the field of material sciences and advanced Nano technology. After completing his studies, he was offered a role as a teaching assistant at the Stanford University, which he gratefully accepted. There he met Ms. Shobs Rachel, a research scholar in bio-mechanics who is a British resident. Both got married to each other in September, 2020 in the US.

(14)

HBC

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The family of Shaswat belongs to Bihar. Despite the fact that Shobs has never been to India, she was tempted by the Indian culture and traditions and wanted to settle in India. So, Shaswat purchased an apartment in Noida in the joint name of himself and Shobs, after around six months of their marriage. The payment was made through a debit entry to a non-resident account maintained by Shaswat. This apartment is their first owned immovable property.

Dr. Rekha Mishra, who is the sister of Shaswat, is working as a medical professional in RIMS, Jaipur. Shaswat visited his sister on her birthday and finds the PG house where she was staying was not fully equipped and did not have the required facilities. Considering an investment perspective and the comfort for his sister, Shaswat bought a studio apartment in Jaipur by making payment of ₹ 25 Lakh, registered in the name of Rekha. The price of the apartment is equal to the fair market value. Shaswat purchased another house in Patna, his hometown in the name of his mother because after retirement he also wishes to settle in Patna. He finalized the home for ₹ 125 Lakh, due to mild recession whereas the fair market value of such house is ₹ 140 Lakh on the date of registration, but now the same has fallen to ₹ 130 Lakh. Shaswat also purchased 50,000 shares of a private company, Dynamic Medical Devices Private Limited (DMDPL), which was founded by one of his friends, and held the same in the name of Shobs. DMDPL, in addition to trading on medical devices, also performed medical IT development and it exported its latest medical coding software to one of its customers over the electronic media on 30th June, 2020 for which the invoice was raised on 5th July, 2020.

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(15)

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During January, 2019, DMDPL had acquired medical devices from Switzerland for a value of EUR 1,000,000 under its EPCG license and payment was made. The goods were imported, but kept in the bonded warehouse since the Bill of Entry was not made and therefore, DMDPL did not take delivery of the same within 6 months from the date of import/payment made. Once Shobs acquired the shares of DMDPL in January, 2020, she took over the operations of the Company as the Managing Director from that date. However, the goods continue to be retained in the bonded warehouse. In June, 2021, a show cause notice was sent to Shobs stating that there is a contravention of the provisions of FEMA and Shobs is liable for levy of penalty under the relevant regulations.

Evaluate the following questions:

3.1. Evaluate and identify whether any of the below mentioned are Benami transactions under the PBPT Act assuming : 2

(A) Purchase of property by Rekha worth ₹ 80 Lakh by paying ₹ 70 Lakh through bank transfer and ₹ 10 Lakh in cash. The registration was done for ₹ 70 Lakh.

(B) Purchase of property by Shobs (paid for by DMDPL) holding it in fiduciary capacity.

(C) Purchase of property by Shaswat in his name by using money of his friend.

(D) Purchase of property by Shaswat in the name of his mother and himself.

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(16)

HBC

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- 3.2. What is the latest date by which DMDPL must realize the full value of the medical coding software exported by it through electronic mode ? **2**
- (A) 5th April, 2021.
(B) 5th January, 2021.
(C) 30th March, 2021.
(D) 31st December, 2021
- 3.3. Whether the immovable property purchased by Shaswat in Noida, in the joint name of himself and his wife is valid under PBPT Act, 2016 ? **2**
- (A) Valid, because the payment was made through a debit entry to the non-resident account of Shaswat.
(B) Valid, because the property is acquired jointly.
(C) Valid, since this is the only property they own.
(D) Invalid, since it is a Benami transaction.
- 3.4. When evaluating the character of the transaction and the intention of the person contributing the money to acquire a property, and identifying it is a Benami transaction or not, which of the following is not a relevant criteria : **2**
- (A) Motives governing their actions for making the transaction.
(B) Relationship between the parties.
(C) The basis of the surrounding circumstances.
(D) The difference, if any, between the actual consideration and value at which the registration is made.

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3.5. Assuming that Shaswat purchased the shares in the name of his wife out of sale proceeds of the immovable property purchased by Shaswat in Patna and not held jointly with his mother, then whether shares can be termed as Benami Property ? 2

- (A) Yes.
- (B) No.
- (C) Partially yes, partially no.
- (D) Need more information to conclude

Answer the following questions :

3.6. Evaluate with reasons whether Shobs could be made liable for a contravention committed by the erstwhile management of the DMDPL. 6

3.7. Rekha is of the view that Shobs has violated the requirement of FEMA by acquiring a property in India. Evaluate. 4

3.8. Which of the following persons may be considered as a Benamidar ? Discuss with reasons. 5

- (a) Shaswat Mishra
- (b) Rekha Mishra
- (c) Mother of Shaswat
- (d) Husband of Rekha

Case Study : 4

Nutcase Private Limited (“NPL”) is a premium cashew, almond farming and manufacturing company which specialises in growing, and selling salted cashew, almonds and other dry fruits in India and abroad. NPL was started in the year 2014 by Mr. Vishwanath Naroda, Managing Director and has its head office in Nasik, Maharashtra with branches all over the country. Vishwanath started this company along with his long-time friend Mr. Arjun Nambiar, who comes from a family of civil engineers. Arjun is a Chartered Accountant and is the Chief Financial Officer of NPL. Vishwanath and Arjun together own 70% of the share capital of NPL and the balance is held by a large private equity investor.

Arjun and his brother Ajit, commenced a real estate company called Nambiar Constructions (NC) with its head office in Trivandrum and announced a new 60 apartment project named as “Nambi Sundaram”, a luxury apartment complex in Trivandrum with a variety of amenities including swimming pool, cricket net, fully equipped club house with all amenities, etc. The Company applied for registration of the project on 15th September, 2020.

Based on the past performance of the Nambiar Constructions group and the general image of Arjun and Ajit, there was tremendous demand for the apartments in the project and all the apartments were booked within 1 month from the date of launch (20th September, 2020). After registering the apartments in the name of the allottees, Nambiar Constructions informed the allottees that they need to pay the water and electricity charges directly to the concerned departments for their apartments. The following were some of the conditions mentioned in the agreement for sale entered into by NC with its allottees :

- (1) Expected date of completion of constructions – 31st March, 2022.
- (2) Expected date of handover – 31st May, 2022, subject to a grace period of 4 months.
- (3) Booking Advance amount to be paid prior to entering into agreement to sale – 25% of total cost of apartment
- (4) Open car parking cost - INR 400,000 (optional)
- (5) Any delay in payment of dues by the allottees will be liable for interest on such delayed payments.
- (6) Return of booking amount shall not be entertained for any reason whatsoever.
- (7) Nambiar Constructions shall be liable for any deficiency in quality of construction for a period of 3 years from the date of handing over the apartments.

Nambiar Constructions collected a total amount of INR 8000 lakh from the allottees and deposited an amount of INR 6000 lakh in an escrow account for exclusively use for construction of the complex. Separately, an amount of INR 5 lakh each was collected from the 60 allottees in cash, aggregating to INR 300 lakh towards interior work, modular kitchen, supplying fans and lights, etc. This money was accounted as receipt in a separate company, M/s. Decorit Interiors, which was owned by Ms. Amaya Nambiar, sister of Arjun.

Ajit attended one of the real estate conclaves held in Mumbai, in which he met one Mr. Hershelle Stuart, who runs an interior designing warehouse in Belgium and showed quite a few exhibits to Ajit. Ajit was impressed by the designs and the prices quoted by Hershelle. He was also amenable to receive funds in cash in India through an intermediary and then provide the material to Ajit from Belgium. Based on the same, Ajit arranged for making cash payment to the extent of INR 200 lakh to an intermediary in Delhi, and the material was received from Hershelle in a month. During his visit to India, Hershelle noted that his Belgian passport got expired and he did not realise the same. Since he did want to leave India immediately, he got in touch with a travel agent, Saurabh Shankar, who helped him get a forged passport, for which Hershelle paid INR 4 lakh in cash.

Out of the balance INR 100 lakh cash available with Decorit Interiors, Ajit used cash amounting to INR 25 lakh to pay amount to various intermediaries to facilitate timely and smooth registration process of the apartments of Nambi Sundaram, which was paid by the intermediaries to the officials of the Sub-Registrar.

As one of the shareholders of Decorit, Amaya decided to visit Belgium to see the interior designs and then place an order for the upcoming projects. During her visit, she purchased 500 grams worth of gold (costing INR 15 lakh) and since, she did not have enough money, she asked Ajit to make the payment through the intermediary in Delhi. Based on the discussion with the intermediary, Ajit

(21)

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provided an antique coin which he got from one of his social friends to the intermediary as consideration for the gold purchased by Amaya in Belgium. Based on the same, Ms. Amaya brought the gold with her through the green channel. The Enforcement Directorate sent a notice to Ajit that he was in possession of the immovable property in the US jointly with a relative outside India and it was observed that there was an outflow of funds from India equivalent to USD 300,000. Ajit responded that the outflow of funds to the extent of USD 250,000 was from the Resident Foreign Currency (RFC) account held in his name. The adjudicating authority held an inquiry in which it was found that the balance USD 50,000 were sent out of India from the earnings by Ajit out of the proceeds from the sale of opium to a dealer in Nigeria.

Answer the following questions :

4.1. As per provisions of RERA, collection of cash by Decorit Interiors for interior work, modular kitchen, supplying fans and lights, etc. : **2**

- (A) May be appropriate, since RERA does not specify the mode of collection.
- (B) May not be appropriate, since collection should be done as per the stipulations of RERA.
- (C) May be appropriate, since provisions of RERA are not applicable.
- (D) May not be appropriate, since Decorit Interiors are not registered with RERA.

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4.2. Evaluate the view of the Nambiar Constructions relating to the payment of water and electricity charges by the allottees. 2

- (A) The registration of the apartments denote that the allottees are now the legal owners of the apartments and hence, need to bear the water and electricity charges.
- (B) The promoter is liable for making payment for the water and electricity charges until the physical possession is transferred to the allottees.
- (C) This is dependent on the terms of the agreement of sale between Nambiar Constructions and the allottees.
- (D) This amount need to be paid equally by Nambiar Constructions and the allottees, since the registration is completed and only transfer of physical possession is pending.

4.3. Which of the following entities are not obligated to provide information under Section 12A of the PMLA 2002 2

- (A) Person running a Casino
- (B) Department of Tourism
- (C) Real Estate Agents
- (D) Real Estate Investment Trust

4.4. Post demonetization, the intermediary helped many of his customers in exchanging their old currency notes with newly issued currency. Is he liable for punishment under any of the provisions of the law applicable in India, if the total value involved in such transactions is less than INR 100 lakh ?

2

- (A) Liable for the commission of offence under the Indian Penal Code, 1860 as well as under the Prevention of Money Laundering Act, 2002.
- (B) Liable to be punished under the Indian Penal Code, 1860 for the commission of offence but he is not liable under the Prevention of Money Laundering Act, 2002 as the total value involved is less than INR 1 crore.
- (C) Liable under the Foreign Exchange Management Act, 1999 for non-compliance with regulations related to foreign exchange.
- (D) Not liable for any punishment under any of the provisions of the law applicable in India, since this was done on humanitarian grounds to assist people who needed cash urgently.

4.5. Amaya bought gold jewellery worth INR 15 lakhs from Belgium through the green channel. Is this an offence under the PMLA, 2002 ?

2

- (A) Yes, because she came through the green channel and evaded duty of customs.
- (B) No, whilst it is an offence, it is not actionable under the PMLA 2002.
- (C) No, she did not pay any cash for the purchase.
- (D) Yes, since purchase of gold from EU countries requires specific consent as per the agreement entered with foreign countries as per Section 56 of PMLA 2002.

Answer the following questions :

- | | |
|--|---|
| 4.6. Examine the appropriateness of the conditions mentioned in the agreement for sale, in the context of the provisions of RERA, 2016. | 5 |
| 4.7. The enforcement directorate has sought your advice on identifying all the offences committed by the parties under the PMLA, 2002 described in the case study. Identify the offences, the parties involved and the punishment for the offence of money laundering. | 6 |
| 4.8. What are the possible actions that can be taken against Ajit for the offence committed by him under the provisions of the Prevention of Money Laundering Act, 2002 ? | 4 |

Case Study : 5

Mr. Murari Lal Chowdhury is a renowned businessman from Bhatinda (Punjab). He founded Supreme Grains Ltd (“SGL”) in the year 2007. The initial members included himself, his wife Gayatri Chowdhury, and his two sons Sagar and Sanjay.

Mr. Murari started procuring wheat and other pulses from the local farmers and after processing and packing, the same were supplied to local markets. He started his company with an initial capital of ₹ 50 lacs and controlled 90% of the company’s voting share. Within a short span of 5 years the company became a household name with distribution network spread all over the states of Punjab and Haryana.

(25)

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Seeing the opportunities offered by real estate sector, Mr. Murari decided to expand SGL's business into this sector. Accordingly, during the third quarter of financial year 2017-18, SGL developed and launched a new residential-cum-commercial project in Bhatinda after seeking registration under the Real Estate (Regulation and Development) Act, 2016 (RERA). When the commercial launch was organized, it was announced by SGL that the project is available at an attractive rate of ₹ 8,800 per square foot and the units are very spacious since they admeasure 5,000 square feet built-up area with total 100 units.

Also, marketing brochure contained the following features included in the project :

- Italian marble in the kitchen
- 5 Star rated Air Conditioners
- 3 Star rated Geysers
- French Windows of reputed brand
- Elevators of top brands
- Open parking slot at a nominal price of ₹ 11,000
- Massive multi-level kids play area
- Ducts attached to each flat
- Comprehensive insurance for the project

Marketing brochure mentioned that builder provides warranty of 5 years of the products with additional free 1 year warranty.

HBC

P.T.O.

It was informed in the marketing material that the project would be completed in a time frame of 5 years.

Mr. Bhakt was one of the allottees who bought flat number 205 in Tower 1 of the project after several rounds of meeting with SGL. It was agreed with him that a Ganesh Temple would be constructed as a part of the project in the eastern side of Podium 2.

During the course of the project, an intimation along with a certificate from engineer was sent to all the allottees that due to a technical objection received from fire department, temple will have to be shifted from Podium 2 to Podium 3.

When this fact came to the knowledge of Mr. Bhakt, he consulted his lawyer who advised to file a complaint against the builder with the authorities. Also, he reported several defects in the features contained in the marketing brochure.

The project was completed on time and the invitation was sent to all the allottees to take physical possession of their respective units. After staying for about 8 months in the flat number 406 in Tower 4, Mr. Sultan informed builder that he is facing serious issues with the quality of MCB provided and there is a potential risk of short circuit which could lead to massive losses to the building as a whole. On investigation by an independent electrician appointed by Mr. Sultan, it was found that lining of electricity wire was done along with water pipe lines and due to internal damage, problem is arising. However, the promoter was harping on the fact that the issue is in the MCB and not in the wirings. The investigation done by electrician was confirmed by other electricians who surveyed a few other flats.

(27)

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Further, Mr. Sultan complained that the grass given by the builder in the flower bed area was of sub-standard quality and needs replacement.

With the onset of Covid-19 pandemic and the resultant slowdown in real estate sector, "SGL" got under financial pressure. SGL was now in default in repayment. Repeated follow up by the Financial Institutions with the corporate debtor, "SGL", for submitting its specific plan of action for repayment of dues did not evoke any meaningful response. Therefore, after a joint lenders' meeting, all the financial creditors unanimously decided to apply under the provisions of IBC, 2016, to the NCLT for starting the process of insolvency resolution in respect of the corporate debtor, "SGL". Financial creditors filed an application before NCLT which was admitted by NCLT on 20th MAY, 2021 and orders issued for commencement of a moratorium period of 180 days, appointed Mr. Ram, an IRP. Mr. Ram made a public announcement inviting claims from all concerned. Based on the claims filed, the following creditors were identified :

D1 : Financial debts owed to unsecured creditors – ₹ 10 crores.

D2 : Workmen's dues for the period of 24 months preceding the liquidation commencement date – ₹ 30 Crores.

D3 : Debts owed to a secured creditor who has relinquished his security – ₹ 60 crores.

D4 : Debts owed to Central Government – ₹ 10 crores.

D5 : Debts owed to a secured creditor for an amount unpaid following the enforcement of security interest – ₹ 25 crores.

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P.T.O.

Mr. Ram, who has been appointed as Interim Resolution Professional, in the last financial year, had given some legal opinions on financial matters to “SGL” and had charged fees.

Mr. Murari is not clear on the provisions of Insolvency and Bankruptcy Code, 2016 and requested his Company Secretary to advise him on the vital objectives which are intended to be achieved with the Code and also whether the initiation of insolvency resolution process can be done by creditors only or by debtor also. Mr. Murari also wants to know the specified procedure and terms of appointment of an IRP.

Answer the following questions :

5.1. As per the provisions of RERA, which of following is not treated as part of common area ? 2

- (A) Kids play area.
- (B) Duct attached to the units.
- (C) Balcony attached to the living room.
- (D) Area covered by the internal walls.

(29)

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- 5.2. On completion of the project and after receipt of occupancy certificate, when can an allottee take physical possession of the flat ? **2**
- (A) Within two months.
 - (B) Within three months.
 - (C) Within six months.
 - (D) Within one month
- 5.3. Under RERA, when all documents in connection with insurance shall be handed over by the promoter to the allottees ? **2**
- (A) On receipt of final payment / instalment.
 - (B) On receipt of occupancy certificate.
 - (C) On receipt of NOC from fire department.
 - (D) On formation of society.
- 5.4. The Adjudicating Authority has by an order declared moratorium period for "SGL". Vide the moratorium order, which of the following shall not be prohibited ? **2**
- (A) The action to foreclose security interest created by the corporate debtor in respect of its property.
 - (B) The institution of arbitration proceedings.
 - (C) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
 - (D) The supply of raw wheat and pulses from its suppliers for processing and packing.

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(30)

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Marks

5.5. The NCLT rejected the resolution plan for want of compliance with the IBC, accordingly the proceeds from the sale of liquidation shall be distributed in the following order of priority :

(A) D2, D1, D3, D4 & D5 (ranked equally)

(B) D2 & D5 (ranked equally), D3, D1, D4.

(C) D2 & D5 (ranked equally), D1, D3, D4.

(D) D3 & D2 (ranked equally), D5 & D4 (ranked equally).

5.6 Answer the following based on the facts given in the Case Study with reference to the provisions of the IBC, 2016 :

(i) Advise Mr. Ram on the independence with the Corporate Debtor. 3

(ii) Advise "SGL" whether the initiation of insolvency resolution process can be done by creditor only or by corporate debtor also. 2

(iii) Can IRP be appointed by the specified procedure and for a specific term ? Please elaborate. 4

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5.7. Explain the following in light of the Provisions of the Real Estate (Regulation and Development) Act, 2016 (RERA) :

- (i) Can home buyers commence proceedings under Consumer Protection Act, 1986 against developers even after commencement of RERA ?
Discusses with the help of a case law. **2**
- (ii) Mr. Bhakt has approached you to confirm advice given by his lawyer.
Kindly assist Mr. Bhakt on the points mentioned by the lawyer, and the remedies available. **2**
- (iii) Promoter of the project has appointed you to advise on the issues raised by Mr. Sultan. **2**

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